Supreme Court, U.S.
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IN THE

Supreme Court Of The United States

OCTOBER TERM, 1998

ISOM E. TURQUITT,

Petitioner,

v.

JEFFERSON COUNTY, ALABAMA,

Respondent.

On Petition for a Writ of Certiorari from the United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Court of Appeals for the Eleventh Circuit erroneously determined, in direct conflict with other Circuit's Court of Appeals, that a county sheriff is not a county policymaker in his operation of the county jail for purposes of imposing liability under 42 U.S.C.A. § 1983 against the county.

2. Whether the decision of the United States Court of Appeals for the Eleventh Circuit directly conflicts with the express statutory authority conferred on Alabama counties. Whether the Eleventh Circuit can grant civil immunity to behavior for which the State of Alabama, through its statutory scheme, has imposed criminal liability.

3. Whether the Eleventh Circuit's Decision directly conflicts with the decisions from other Circuits.

4. Whether the Eleventh's Circuit's decision is contrary to this Court's recent decision in *McMillian v. Monroe County, Alabama.*

LIST OF PARTIES

1) Isom E. Turquitt — Petitioner

2) Jefferson County, Alabama — Respondent

3) Linn Moore — Deputy Sheriff of Jefferson County, Alabama

4) James Woodward — Sheriff of Jefferson County, Alabama

5) Mary M. Buckelew — Jefferson County, Alabama Commissioner

6) Bettye Fine Collins — Jefferson County, Alabama Commissioner

7) Jeff Germany — Jefferson County, Alabama Commissioner

8) Chris McNair — Jefferson County, Alabama Commissioner

9) Gary White — Jefferson County, Alabama Commissioner

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

LIST OF PARTIES ii

TABLE OF AUTHORITIES v

OPINIONS BELOW 1

JURISDICTION 2

STATUTORY PROVISION INVOLVED 2

STATEMENT OF THE CASE 3

REASONS FOR GRANTING THE WRIT 6

I. The Decision of the United States Court of Appeals for the for the Eleventh Circuit Erroneously Overruled the Well-Established Precedent Set by *Parker v. Williams* and Granted Civil Immunity for Behavior of the County for which the State of Alabama Statutes Impose Criminal Liability ... 6

II. The Decision of the United States Court of Appeals for the Eleventh Circuit Directly Conflicts With the Express Statutory Authority Conferred on Alabama Counties ... 10

III. The Eleventh Circuit's Decision Directly Conflicts With the Decisions from Other Circuits 14

IV. The Eleventh Circuit's Decision is Contrary to this Court's Recent Decision in *McMillian v. Monroe County, Alabama* 18

TABLE OF CONTENTS (continued)

Page

CONCLUSION 20

APPENDIX A A-1

APPENDIX B B-1

TABLE OF AUTHORITIES

CASES Page

Anderson v. Gutschenritter,
836 F.2d 346 (7th Cir. 1988) 17, 18

Blackburn v. Snow,
771 F.2d 556 (1st Cir. 1985) 15, 16

Dotson v. Chester,
937 F.2d 920 (4th Cir. 1991) 15

Familias Unidas v. Briscoe,
619 F.2d 391 (5th Cir. 1980) 8, 9, 10, 16

Hearn v. Gainesville,
688 F.2d 1328, 1334 (11th Cir. 1982) 8

Lucas v. O'Loughlin,
831 F2d 232 (11th Cir. 1987) 4, 9, 10

McMillian v. Monroe County, Alabama,
117 S.Ct. 1734, 138 L.Bd.2d 1 (1997) 18, 19

Monell v. New York City Department of Social Services,
436 U.S. 658 (1975) 6, 15

Parker v. Williams,
862 F.2d 1471 (11th Cir. 1989) 2, 4, 6, 7, 8, 9, 14, 15, 18, 19, 20

Pembaur v. City of Cincinnati,
475 U.S. 469, 106 S.Ct. 1292,
89 L.Ed.2d 452 (1986) 17, 18

Swint v. City of Wadley,
5 F.3d 1435 (11th Cir. 1993) 4

Turner v. Upton, Texas,
915 F.2d 133 (5th Cir. 1990) 16, 17

Turquitt v. Jefferson County, Alabama,
No. 96-633, 137 F.3d 1285 (11th Cir.) 1998) ... 1, 2, 20

TABLE OF AUTHORITIES (continued)

CODE SECTION	Page
28 U.S.C.A. § 1292(b)	4
28 U.S.C.A. § 1254	2
42 U.S.C.A. § 1983	2, 3, 4, 6, 7, 8, 9, 14, 15, 17, 19, 20
Alabama Constitution of 1901, Art. V, § 112	10
Alabama Constitution of 1901, Art. V, § 138	10, 13
Ala. Code 1975 § 11-12-14	8
Ala. Code 1975 § 11-12-15	2, 12
Ala. Code 1975 § 11-12-15 (a)(1)	8
Ala. Code 1975 § 11-12-15 (a)(2)	7, 8
Ala. Code 1975 § 11-14-10	2, 7, 11
Ala. Code 1975 § 11-14-13	2, 11
Ala. Code 1975 § 11-14-14	2, 11
Ala. Code 1975 § 11-14-15	2, 11, 13
Ala. Code 1975 § 11-14-19	2, 11
Ala. Code 1975 § 11-14-20	2, 7, 12
Ala. Code 1975 § 11-14-21	2, 8, 11, 12
Ala. Code 1975 § 11-14-22	2, 12
Ala. Code 1975 § 11-16-28	2, 7, 11
Ala. Code 1975 § 11-16-29	8
Ala. Code 1975 § 14-6-1	2, 8, 10
Ala. Code 1975 § 14-6-4	8
Ala. Code 1975 § 14-6-16	2, 11
Ala. Code 1975 § 14-6-21	2, 11

TABLE OF AUTHORITIES (continued)

CODE SECTION Page

Ala. Code 1975 § 14-6-41(b) 2, 12

Ala. Code 1975 § 14-6-81 ..... 8, 13

Ala. Code 1975 § 14-6-82 13

Ala. Code 1975 § 14-6-84 13

Ala. Code 1975 § 14-6-85 13

Ala. Code 1975 § 14-6-87 13

Ala. Code 1975 § 14-6-89 13

Ala. Code 1975 § 14-6-90 13

Ala. Code 1975 § 14-6-91 13

Ala. Code 1975 § 14-6-92 ..... 2, 12

Ala. Code 1975 § 14-6-93 ..... 2, 12

Ala. Code 1975 § 14-6-103 ..... 2, 11

Ala. Code 1975 § 26-22-16 13

Ala. Code 1975 § 36-3-4 13

Ala. Code 1975 § 36-22-18 13

Ala. Code 1975 § 36-22-3(4) 13

OTHER AUTHORITIES

M.G.L.A. ch. 126 § 16 (1979) 16

M.G.L.A. ch. 127 § 30, 33 (1979) 16

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On Petition for a Writ of Certiorari from the United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

The Petitioner, Isom E. Turquitt, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in *Turquitt v. Jefferson County, Alabama*, No. 96-6333, 137 F.3d 1285 (11th Cir. 1998) opinion issued March 25, 1998), in regard to civil liability against the county for the acts of its county Sheriff in operating the county jail.

OPINIONS BELOW

The historical background of this action is set forth in the Statement of the Case, infra. The decision of the

United States District Court for the Northern District of Alabama, dated January 19, 1996 (App. A, infra, 1a-13a), is unreported. The United States Court of Appeals for the Eleventh Circuit decision (App. B, infra, 14a-29a), dated March 25, 1998 is reported at *Turquitt v. Jefferson County, Alabama*, No. 96-6333, 137 F.3d 1285 (11th Cir. 1998).

JURISDICTION

On March 25, 1998, the United States Court of Appeals for the Eleventh Circuit issued an opinion which reversed and remanded the trial court's decision and thereby effectively overruled the well established precedent set forth under *Parker v. Williams*, 862 F.2d 1471 (11th Cir. 1989) to the extent that it held that Alabama Sheriff's are county policy makers in their daily management of county jails.

The jurisdiction of this Court is invoked under 28 U.S.C.A. § 1254 and pursuant to Rule 10 (a), Rules of the Supreme Court of the United States, as the decision of the Court of Appeals for the Eleventh Circuit herein directly conflicts with the decisions of other Circuit's Courts of Appeals on the same important matter.

STATUTORY PROVISION INVOLVED

This action involves liability invoked pursuant to 42 U.S.C.A. § 1983. Also relevant to this action are numerous statutory provisions of the Alabama Code 1975 including, but not limited to, Ala. Code § 11-12-15, Ala. Code § 11-14-10, Ala. Code § 11-14-13, Ala. Code § 11-14-14, Ala. Code § 11-14-15, Ala. Code § 11-14-19, Ala. Code § 11-14-20, Ala. Code § 11-14-21, Ala. Code § 11-14-22, Ala. Code § 11-16-28, Ala. Code § 14-6-1, Ala. Code § 14-6-16, Ala. Code § 14-6-21, Ala. Code § 14-6-41(b), Ala. Code § 14-6-92, Ala. Code § 14-6-93, Ala. Code § 14-6-103.

STATEMENT OF THE CASE

(i) Course of Proceedings and Disposition in the Court Below

This is a civil rights action filed pursuant to 42 U.S.C.A. § 1983 by the Estate of Phillip Turquitt, a pre-trial detainee who was violently and brutally killed by another prisoner in the Jefferson County Jail. The violent propensities of the assailant were known by the Defendants and the assailant had been convicted of a felony and was waiting to be transferred to a facility for violent and mentally ill inmates. Plaintiff's estate has sued Jefferson County, Alabama, the Jefferson County Sheriff in his individual and official capacities and the several deputy sheriffs in their individual and official capacities. No discovery has been initiated in this matter as all proceedings had been stayed by the trial court during the pendency of the county's appeal. Plaintiff's Complaint against the County is grounded upon theories of (1) deliberate indifference to the substantial risk of serious harm to the inmates of the Jail; (2) lack of an adequate policy to control inmate violence in the jail, as well as a failure to enforce a policy of classifying and segregating inmates based upon status, propensity for violence, medical needs, etc.; and (3) failure to adequately staff, train and supervise its employees, officers and agents, and a failure of such employees, officers and agents to supervise and control the inmate population.

Jefferson County moved for dismissal or, in the alternative, summary judgment on the grounds that (1) liability cannot be ascribed to the County under § 1983 for the acts and omissions of the County Sheriff based upon a theory of respondeat superior; and (2) the County has no custom or policy with regard to the operation of the jail.

The trial court denied the County's Motion for Summary Judgment based on the well established precedent of *Parker v. Williams*, 862 F.2d 1471 (11th Cir. 1989), holding that an Alabama county may be liable under § 1983 for the constitutional torts of a sheriff in connection with the operation of a jail because the sheriff is the county's policymaker with respect to the jail and is thereby exercising county authority in operating the jail.

Although the trial court denied the County's motion, it noted inconsistencies in the law between *Parker v. Williams*, *Swint v. City of Wadley*, 5 F.3d 1435 (11th Cir. 1993) and *Lucas v. O'Loughlin*, 831 F.2d 232 (11th Cir. 1987).

In accordance with 28 U.S.C.A. § 1292(b), the trial court certified for interlocutory appeal the legal question of whether sheriffs are exercising county authority with regard to operating a jail. The trial court order contains the language required by 28 U.S.C.A. § 1292(b).

After en banc oral argument, the United States Court of Appeals for the Eleventh Circuit issued an opinion, dated March 25, 1998, reversing the trial court, holding that an Alabama county cannot be held liable under 42 U.S.C.A. § 1983 for injuries sustained by a county inmate arising from the sheriff's management of the county jail. In doing so, the Court effectively overruled its decision in *Parker v. Williams*, 862 F.2d 1471 (11th Cir. 1989).

(ii) Statement of the Facts

Plaintiff's decedent was violently and brutally killed after being attacked by another prisoner in the Jefferson County Jail on July 29, 1995. The Plaintiff's decedent was a pre-trial detainee in the jail. The prisoner who fatally attacked the Plaintiff's decedent was a convicted felon known by the Defendants to be suffering from mental illness, and displaying violent propensities. Several

months prior to the attack, said prisoner was court ordered into a mental health facility; nevertheless, he remained confined at the Jefferson County Jail in the general population and intermingled with non violent, pretrial detainees.

The fatal incident occurred in the dayroom of the jail. The convicted felon approached the Plaintiff's decedent and inflicted numerous blows to the Plaintiff's decedent's head, causing the Plaintiff's decedent to fall from his chair to the floor. After Plaintiff's decedent laid on the floor for a period of time, deputies arrived and found the Plaintiff's decedent lying unconscious on the dayroom floor. The paramedics were contacted and thereupon transported the Plaintiff's decedent to a local hospital. Having never regained consciousness, the Plaintiff's decedent died in the hospital the following day.

The cause of death was determined by the coroner to have been a ruptured vertebral artery, resulting from blunt force. The manner of death was classified as homicide.

The Complaint, as amended on September 27, 1995, named as Defendants Jefferson County, Alabama; the Jefferson County Sheriff in his official and individual capacities; the Chief Jailer, individually and in his official capacities; the Deputy Sheriff in his individual and official capacities; and Richard Roe, jailer and Dispatcher, in his official and individual capacities.

REASONS FOR GRANTING THE WRIT

I. The Decision of the United States Court of Appeals for the Eleventh Circuit Erroneously Overruled the Well-Established Precedent Set by *Parker v. Williams* and Granted Civil Immunity for Behavior of the County for which the State of Alabama Statutes Impose Criminal Liability.

The present rights in question were clearly established, and Jefferson County, Alabama was on notice of constitutional violations in the jail. The basis of Jefferson County's liability under 42 U.S.C.A. § 1983 was premised upon the authority of *Monell v. New York City Department of Social Services*, 436 U.S. 658 (1975), and the more recent authority espoused by the Eleventh Circuit in *Parker v. Williams*, 862 F.2d 471 (11th Cir. 1989). The Eleventh Circuit, as well as numerous other Circuits, have repeatedly recognized that a county may be liable for the acts of its sheriff who is acting as the county policymaker or as "the ultimate repository of county authority".

The established precedent involved in this appeal upon which § 1983 liability against the county is ascribed is *Parker v. Williams*, 862 F.2d 471 (11th Cir. 1989). In Parker, the chief jailer, an employee of the county hired by the Sheriff, allegedly raped a pre-trial detainee at the Macon County Jail. The inmate subsequently brought suit against the sheriff, chief jailer and the county under § 1983 and state law tort claims. With respect to the county's liability, the Court noted the relationship between the Sheriff and the county government. The Court began by acknowledging that, under *Monell*, a local governing body can be sued directly under § 1983 for recovery of monetary damages caused by violations of established constitutional rights:

> "It is when execution of a government's policy or custom, whether made by lawmakers or by

> those whose edicts or acts may fairly be said to represent official policy inflicts the injury, the government as an entity is responsible under § 1983." Custom which has not received official approval may also provide a basis for imposing liability on a municipality or other local government or body, provided the custom is "permanent and well settled."

Parker, 862 F.2d at 1477.

The Court further stated that although the sheriff may have acted independently, he was nevertheless the ultimate repository of county authority in making discretionary policy decisions, and in such capacity may bind the county. *Id.* at 1478. The Court further noted that attention should be focused on the substance of the official's authority over a subject and not upon a technical allocation to determine whether the official is the ultimate repository of county authority. *Id.* at 1478.

In demonstrating that the sheriff was exercising county power in making discretionary policy decisions regarding the county jail, the Court in *Parker* characterized the relationship between the Sheriff and the county as a partnership, stating:

> "In practice, Alabama counties and their sheriffs maintain their county jails in partnership. The county in essence provides the facility and the money for upkeep, and the sheriff in essence manages the institution. Every county in Alabama must maintain a county jail. Ala. Code § 11-14-10. More precisely, every county must obtain a site and erect a "suitable" jail. Ala. Code § 11-16-28. Once in place, the county must appropriate funds for the jail. *Id.* at § 11-14-20. The county's financial support of the jail includes compensating the sheriff, *Id.* at § 11-12-15(a)(2), and paying for reasonable business expenses incurred by the sheriff. *Id.* at

> § 11-12-14, 11-12-15 (a)(1),(2). The Alabama Board of Corrections reports directly to the county commission as the "body having control over the jail." *Id.* at § 14-6-81. Alabama relegates the legal custody and charge of the county jail to the county sheriff. *Id.* at § 14-6-1. The sheriff is the caretaker with regard to prison living conditions. *Id.* at § 11-14-21. Any prisoners in the county jail are in the sheriff's custody. *Id.* at § 11-16-29, 14-6-4. Pursuant to his responsibility of running the county jail, the sheriff has authority to hire jailers and other necessary personnel. *Id.* § at 14-6-1."

Id. at 1478,1479.

The Eleventh Circuit further noted that "although the sheriff is a state official, he is vested with county authority, and the county cannot be insulated from liability based on its responsibilities by simply vesting authority in a state officer." *Id.* at 1479. *See Hearn v. Gainesville*, 688 F.2d 1328, 1334 (11th Cir. 1982). In light of the authority vested in the sheriff regarding the operation of the county jail, the Court concluded that the sheriff was the ultimate repository of county authority and was following customary procedures, which could fairly be ascribed to the county. Finally, the Court noted that the county need not exercise direct control over the sheriff's discretionary decision-making in order to be liable under § 1983 for damages caused by those decisions. *Id.* at 1480.

The Eleventh Circuit's decision in *Parker* was not an aberration in the law, but rather developed from earlier decisions, including *Familias Unidas v. Briscoe*, 619 F.2d 391 (5th Cir. 1980). In *Familias Unidas*, the constitutionality of a Texas statute empowering a county judge to exact public disclosure of the membership of any organization within his county considered to be engaged in activities designed to interfere with the peaceful opera-

tion of public schools was being reviewed. The Court, addressing the issue of county liability, stated as follows:

> "Because of the unique structure of county government in Texas, the Judge — like other elected county officials, *such as the sheriff* and treasurer — holds virtually absolute sway over the particular task or areas of responsibility entrusted to him by state statute and is accountable to no one other than the voters for his conduct therein. [citations omitted] Thus, at least in those areas in which he, alone, is the final authority or ultimate repository of county power, his official conduct and decisions must necessarily be considered those of one 'whose edicts or acts may fairly be said to represent official policy' for which the county may be held responsible under § 1983."

Familias Unidas, 619 F.2d at 404 (emphasis added).

Also, prior to the Eleventh Circuit's decision in *Parker v. Williams*, the Court addressed the issue of whether the sheriff was the policymaker for the purpose of imposing § 1983 liability on the county in *Lucas v. O'Loughlin*, 831 F.2d 232 (11th Cir. 1987). In *Lucas*, a deputy sheriff filed a § 1983 action against the sheriff, the county and others in connection with the termination of his employment. Here, the Eleventh Circuit acknowledged that the sheriff carried out whatever functions state law provided, noting that the sheriff's salary and that of his deputies were paid out of county funds, and further that such salaries and expenses of his office, including the operation and maintenance of the jail, were budgeted each year by the sheriff and submitted to the board of county commissioners. The *Lucas* Court, applying the principal espoused in *Familias Unidas v. Briscoe*, stated as follows:

> "Although elected by virtue of state law, he was elected to serve the county as sheriff. In that

> capacity, he had absolute authority over the appointment and control of his deputies. His and their salaries were paid by local taxation and according to a budget approved by the county commissioners. We conclude, therefore, that his act was the act of St. John's County."

Lucas, 831 F.2d at 235. The circumstances imparting liability on the county in the instant case are similar to those in *Lucas v. O'Loughlin* and *Familias Unidas v. Briscoe* and, consequently, the liability of the county should remain the same.

II. The Decision of the United States Court of Appeals for the Eleventh Circuit Directly Conflicts With the Express Statutory Authority Conferred on Alabama Counties.

State law governs the determination of whether an Alabama sheriff is a county official in the operation of a county jail. Pursuant to the Alabama Constitution of 1901, Art. V, § 138, there is a sheriff in each county of the state, elected by the voters of that county. Ala. Const. Art.V, § 138. The 1901 constitution designates sheriffs as state executive officials. Ala. Const. Art. V, § 112. Although officially designated as state officials, and technically deriving authority from the State, courts have repeatedly recognized that a sheriff may, in certain capacities, implement county authority and thereby act as the final policymaker of county power. Further, although elected by virtue of state law the sheriff is elected to serve the county as sheriff. As such, the relationship is established between the county and the elected sheriff.

With respect to the operation of the county jail, statutory law bestows upon the sheriff the legal custody and charge of the jail in his county (Ala. Code § 14-6-1); the

duty to safely preserve the process by which prisoners are moved to the jail or discharged therefrom (Ala. Code § 14-6-16); and, "*so far as such appropriation will enable him,*" as provided by the county, to keep the jail properly supplied with sufficient water for drinking and bathing; clean and free from offensive odors; and providing the necessary beds, bedding and clothing for the use of its prisoners (Ala. Code § 14-6-21). Such a legislative contingency as enumerated in Ala. Code § 11-14-21 represents further evidence of the legislative intent to create partnership roles between the sheriff and county in the operation of the state's county jails.

By comparison, and in like kind, the county is responsible for providing the facility and maintenance of the county jail (Ala. Code § 11-14-10, § 11-16-28). Numerous provisions of the Alabama Code illustrate the significant authority relegated to Alabama counties in the operation of the county jails. Such provisions confer express authority on each *county* to:

1. Erect and maintain a county jail (Ala. Code § 11-14-10).

2. Ensure that the county jail is of sufficient size and strength and having proper ventilation to securely contain the prisoners therein (Ala. Code § 11-14-13, § 14-6-103)

3. To levy a county tax for the erection or repair of the county jail, and any failure by the county to levy said tax will result in criminal liability (Ala. Code § 11-14-14, 15).

4. To designate and convene special meetings in order to make special appropriations for the health and benefit of the prisoners in the jail (Ala. Code § 11-14-19).

5. To appropriate necessary funds for heating the county jail, supplying water, keeping it

free from offensive odors, providing necessary beds, bedding and clothing, as well as providing compensation for sheriffs, deputy sheriffs and jailers (Ala. Code § 11-14-20; 11-12-15).

6. To supervise the feeding of all prisoners in the county jails (Ala. Code § 14-6-41(b)).
7. To have the chairman of the county commission to inspect the jails *weekly* (Ala. Code § 11-14-22) (emphasis added).
8. To thoroughly fumigate, cleanse and paint the jails (Ala. Code § 14-6-92).
9. To provide adequate janitor service, enforce cleanliness in the jail, provide bathing facilities, soap and towels, hot and cold water, and sufficient bedding and clean clothing (Ala. Code §14-6-93).

In addition to the foregoing authority conferred *exclusively* upon Alabama counties relating to the operation of the county jail, there also exists shared responsibilities and cooperative efforts required of the sheriff and the county in running the county jail. Evidence of the cooperation required between the sheriff and the county commission can be illustrated through the expenditures appropriated by the county commission, wherefore the sheriff is obligated "*so far as such appropriation will enable him*" to keep the jail supplied with water for drinking and bathing, to keep the jail free from offensive odor and to provide for the necessary beds, bedding and clothing for the use of prisoners. Ala. Code § 11-14-21. Such a conditional mandate reveals the legislature's obvious intent to require the sheriff to perform his duties to the fullest extent possible, but only grant him the ability to do it "so far as" the *county allows*. Furthermore, the State of Alabama, through its statutory scheme, reiterated the recog-

nition of the county's involvement by imposing *criminal sanctions* on the county commissioners for failing to execute their duties with respect to the county jail.

Ala. Code § 11-14-15 imposes a criminal penalty and fine if the county commission fails to levy a tax to erect or repair a county jail when necessary.

Ala. Code § 14-6-85 also imposes criminal penalties and a fine for any county commissioner who fails or refuses to give information to the Board of Corrections regarding the county jail.

The Eleventh Circuit's decision to give civil immunity for behavior for which the state has ordered criminal liability and sanctions is irreconcilable.

Additional evidence of county authority at the county jail is illustrated in the Alabama legislature's delegation of power to the county commission for the inspection and sanitation of the county jail. In such delegations, the county commission is repeatedly referenced by the legislature as "the body having control over the jail." (Ala. Code §14-6-81-82; 84-85; 87; 89-91)

Other statutory provisions which cut in favor the conclusion that Alabama sheriffs are county officials include: (1) the sheriff's salary is paid out of the county treasury (Ala. Code § 26-22-16); (2) the county provides the sheriff with the equipment, supplies, lodging and reimbursement for expenses "to the extent reasonably needed for the proper and efficient conduct of the officers of the sheriff's office" (Ala. Code § 36-22-18); (3) the sheriff's jurisdiction is limited to the borders of his county (Ala. Code § 36-22-3(4)); and (4) the sheriff is elected locally by the voters in his county (Ala. Const. of 1901, Art.V., § 138). Furthermore, Justice Ginsburg's dissent aptly notes that Ala. Code § 36-3-4 expressly defines the sheriff as a county official when setting the term to which each such county officer shall be elected. (Ala. Code § 36-3-4).

The foregoing statutory enactments establish the legislature's intent to delegate the authority to operate the county jail below the state level, to each county. The legislative authority conferred upon the county reveals that both the county and the sheriff possess certain powers relating to the county jails. Furthermore, a cursory review of the statutorily-delegated duties of the county and the sheriff reveals the joint and complimentary nature of their roles and authority with respect to the jail to ensure the proper execution and functioning of all systems within the jail. A breakdown or failure by either the county or the sheriff in fulfilling its statutorily delegated duties would serve to create an insurmountable impediment to the safe and proper sheriff for the operation and maintenance of the county jail, the sheriff for would be prevented from carrying out his statutorily delegated duties. Likewise, the statutorily delegated duties conferred to the county provides a mechanism for monitoring and ensuring the proper execution of the sheriff's duties with respect to the county jail. Such a specific and divided delegation of authority compels the conclusion reached by this Court in *Parker v. Williams*; namely, that Alabama counties and their sheriffs maintain their county jails in partnership. *Parker v. Williams*, 862 F.2d at 1478-79.

III. The Eleventh Circuit's Decision Directly Conflicts with the Decisions from Other Circuits.

Decisions from other Circuits are consistent with the determination reached in *Parker v. Williams*, and thereby directly conflict with the Court of Appeals decision herein. Such decisions substantiate the conclusion that the sheriff is, in certain circumstances, a county policymaker capable of possessing final county authority, thereby warranting the imposition of § 1983 liability to the county.

The Fourth Circuit's decision in *Dotson v. Chester*, 937 F.2d 920 (4th Cir. 1991), acknowledged county liability under § 1983 when addressing the responsibility of attorneys' fees allocated to the sheriff in a suit over jail conditions brought pursuant to § 1983. In *Dotson*, the plaintiff brought suit against the county and jail administrators alleging unconstitutional conditions existing within the county jail and seeking declaratory and injunctive relief. The case was ultimately settled by agreement. The trial court allocated attorney's fees proportionately between the county commissioners and the sheriff according to its perception of their relative responsibility. When the sheriff's apportionment was not covered by insurance, this appeal ensued. The Fourth Circuit, in determining who was liable for the judgment against the sheriff, stated, "county liability for the sheriff's operation of the county jail depends on whether the sheriff had final policy-making authority for the county over the county jail." *Dotson*, 937 F.2d at 924. The Court further stated that, in a proper case, a sheriff's acts represent the official policy of the county, and, as such, may be the basis for § 1983 liability. *Id.* at 925. Accordingly, the Court determined that the sheriff possessed final policymaking authority for the county in his operation of the county jail, and that the county could be held responsible for attorney's fees and expenses arising out of the sheriff's actions. *Id.* at 921.

Also consistent with *Parker v. Williams*, the First Circuit, in *Blackburn v. Snow*, 771 F.2d 556 (1st Cir. 1985), ascribed liability to the county under § 1983 for the acts of its sheriff regarding the issuance of a strip search policy for visitors at the county jail. In determining that the sheriff's edicts were chargeable to the county, the First Circuit, citing *Monell*, stated that state law expressly designated the sheriff as the individual responsible for promulgating security policy with respect to corrections fa-

cilities. *Blackburn*, 771 F.2d at 571. Massachusetts law provides that the sheriff shall have the custody and control of its jails in his county, . . . of all prisoners therein, and shall be responsible for them. M.G.L.A. ch. 126 § 16 (1979). In *Blackburn*, the sheriff was further given the statutory authority to control visitation and to maintain order at the jail. M.G.L.A. ch. 127 § 30,33 (1979). Thus, the Court stated:

> "There could hardly be a clearer case of county liability, for when an official is "the final authority or ultimate repository of county power, his official conduct and decisions must necessarily be considered those of one 'whose edicts or acts must fairly be said to represent official policy' for which the county may be held responsible"."

Id. at 571. The Court further reasoned that the county was liable not because county officials, other than the sheriff, were involved in the issuance of the strip search rule, but because the sheriff was a county official, elected by the county's voters to act for them and to exercise the powers created by state law. *Id.* at 571. Accordingly, the Court determined that the sheriff's strip search policy was effectively the county's policy and, therefore, the county must respond to damages for any injures inflicted pursuant to that policy. *Id.* at 571.

Likewise, in *Turner v. Upton, Texas*, 915 F.2d 133 (5th Cir. 1990), the Fifth Circuit stated, "it has long been recognized that, in Texas, the county sheriff is the county's final policymaker in the area of law enforcement, not by virtue of delegation by the county's governing body but, rather, by virtue of the office to which the sheriff has been elected." *Turner*, 915 F.2d at 136. The Fifth Circuit went on to cite *Familas Unidas v. Briscoe*, stating:

> "Because of the unique structure of the county government in Texas . . . elected county officials, such as the sheriff . . . hold virtually abso-

> lute sway over the particular tasks or areas of responsibility entrusted to him by state statute and is accountable to no one other than the voters for his conduct therein . . . Thus, at least in those areas in which he, alone, is the final authority or ultimate repository of county power, his official conduct and decisions must necessarily be considered those of one 'whose edicts or acts may fairly be said to represent official policy' for which the county may be held responsible under § 1983."

Id. at 136.

The Seventh Circuit followed suit with the First, Fourth and Fifth Circuits in *Anderson v. Gutschenritter*, 836 F.2d 346 (7th Cir. 1988). In *Anderson*, a pre-trial detainee, charged with attempted murder and armed robbery of a minor, brought a § 1983 action against the county, sheriff, and jail warden alleging violations of his Eighth and Fourteenth Amendment rights. The plaintiff alleged that he was repeatedly interrogated and threatened by the sheriff, and thereupon requested that the warden place him in protective custody as he feared for his life. After the defendants' failure to honor the plaintiffs request, the plaintiff was attacked, severely stabbed, and later beaten by other inmates. Thereupon, the plaintiff filed suit alleging that the defendants acted with deliberate indifference in failing to protect him. In reversing the trial court's summary judgment in favor of the county, the Seventh Circuit, citing *Pembaur v. City of Cincinnati*, 475 U.S. 469, 106 S.Ct. 1292, 89 L.Ed.2d 452 (1986), recognized that a county can be held liable under § 1983 for a single decision by a municipal policymaker if the decision to adopt a particular course of action is directed by those who establish governmental policies. *Anderson*, 836 F.2d at 349. The Court further stated that the sheriff was responsible for running the county jail and, under

the reasoning of *Pembaur*, the actions of the sheriff are now considered to be the policy of the county. *Id.* at 349.

As reflected by the decisions in the First, Fifth, and Seventh Circuit, *Parker* is not an aberration as the Appellants claim, but rather a logical and reasonable resolution. Therefore, the Eleventh Circuit's decision herein, overruling the well established authority of *Parker v. Williams*, is erroneous, in direct conflict with the decisions from three other Circuits and due to be reviewed.

IV. The Eleventh's Circuit's Decision is Contrary to this Court's Recent Decision in *McMillian v. Monroe County, Alabama.*

The United States Supreme Court's opinion in *McMillian v. Monroe County, Alabama*, 117 S.Ct. 1734, 138 L.Bd.2d 1 (1997), concluded that Alabama sheriffs, when executing their *law enforcement duties*, represent the State of Alabama, not their counties. *McMillian*, at *22. However, the importance of the *McMillian* decision is clearly illustrated through the Court's complete unwillingness to create a rigid, or single, characterization of Alabama sheriffs for all official actions in which they engage. Rather, the Court's opinion repeatedly emphasizes that the determination as to whether governmental officials are final policymakers for the local government can and does vary among particular areas or particular tasks. This Court, in expressing its reluctance to arrive at an "all or nothing" characterization, stated:

> "Thus, we are not seeking to make a characterization of Alabama sheriffs that will hold true for every type of official action they engage in. We simply ask whether Sheriff Tate represents the state or the county when he acts in a law enforcement capacity."

McMillian, at *9.

The clear division among the Justices in *McMillian* is particularly noteworthy. Such a split among the Court evidences that even in functions pertaining to law enforcement, where sheriffs are typically deemed policymakers for the State, the decision is not so clear cut under Alabama law. In fact, the dissenting opinion in *McMillian* offers a well reasoned and compelling counterargument to the majority's decision.

The proper context in which the *McMillian* decision should be received is, perhaps, best expressed in Justice Ginsburg's dissent, wherein she states:

> "The Court's Alabama-specific approach, however, assures that today's immediate holding is of limited reach. **The Court does not appear to question that an Alabama sheriff may still be a county policymaker for some purposes, such as hiring the county's chief jailer, see *Parker v. Williams*, 862 F.2d 1471, 1477-81 (CA.11 1989). And, as the Court acknowledges, under its approach sheriffs may be policymakers for certain purposes in some states and not in others. See ante, at 14-15, and n.10. The Court's opinion does not call into question the numerous Court of Appeals decisions, some of them decades old, ranking sheriffs as county, not state, policymakers. . . . Thus, the Court's opinion, which in my view is misguided, does little to alter § 1983 county and municipal liability in most jurisdictions."**

McMillian, at *42-43. (emphasis added)

Based upon the well reasoned dissent by this Court in *McMillian v. Monroe County, Alabama*, it is clear that this Court has, at least in part, recognized the holding in *Parker v. Williams*, as well as the decisions of various other Court of Appeals decisions, that sheriffs may be policymakers in the operation of county jails as determined.

Such an acknowledgement by this Court certainly provides clear insight against the decision reached herein. Accordingly, the Eleventh Circuit's decision in *Turquitt v. Jefferson County, Alabama* must be reviewed for final clarification of this important issue.

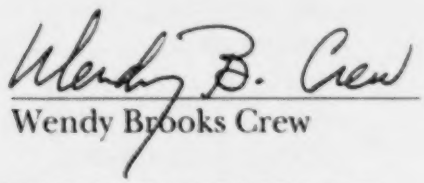
CONCLUSION

If such a decision is permitted by this Court to stand, the effect of the ruling herein is to immunize all counties from any liability under § 1983 arising from the operation of the county jail.

Furthermore, such decision not only erroneously overrules the well established precedent of *Parker v. Williams*, but directly contradicts the authority of the First, Fourth, Fifth and Seventh Circuits, to the extent that said Circuits recognize that a county sheriff is exercising county authority when operating a county jail and is acting as the county's final policymaker therein.

The Petition for Writ of Certiorari should be granted.

Respectfully Submitted,



Wendy Brooks Crew

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the above and foregoing pleading upon all counsel of record listed below:

Jeffrey M. Sewell, Esquire
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by depositing same in the United States Mail, postage prepaid, on this the 21st day of July, 1998.

Wendy Brooks Crew

APPENDIX

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

ISOM E. TURQUITT, Administratrix of the Estate of Phillip Edward Turquitt, Deceased,	)	
	)	CV 95-PT-2054-S
Plaintiff,	)	
vs.	)	
JEFFERSON COUNTY, ALABAMA, JIM McCRELESS and MELVIN BAILEY,	)	
Defendants.	)	

ORDER

In accordance with a Memorandum Opinion filed contemporaneously herewith, the Motion To Dismiss, Alternatively Motion For Summary Judgment, filed by defendant on September 1, 1996, is DENIED. The court, pursuant to 28 U.S.C. § 1292(b), is of the opinion that this order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may advance the ultimate termination of the litigation. This statement is premised on the fact that there has never been a clarification in or after the holding in *Parker v. Williams*, 862 F.2d 1471 (11th Cir. 1989), with regard to when, quoting *Parker*, sheriffs are "exercis[ing] county authority . . . [or] state authority." Further, there appear to be possible in-

consistencies within, between and among *Parker, Swint v. City of Wadley,* 5 F.3d 1435 (11th Cir. 1993) and *Lucas v. O'Loughlin,* 831 F.2d 232 (11th Cir. 1987).

DONE and ORDERED this 19th day of January, 1996.

/s/ Robert B. Propst

ROBERT B. PROPST
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

ISOM E. TURQUITT, Administratrix of the Estate of Phillip Edward Turquitt, Deceased,	)	
Plaintiff,	)	CV 95-PT-2054-S
vs.	)	
JEFFERSON COUNTY, ALABAMA, JIM McCRELESS and MELVIN BAILEY,	)	
Defendants.	)	

MEMORANDUM OPINION

This cause comes on to be heard on defendant Jefferson County's Motion To Dismiss, Alternatively Motion For Summary Judgment, filed on September 1, 1995. The sole present issue is whether the County defendant can, under any circumstances, be held liable for the alleged constitutional violation that plaintiff asserts relates to the defendant sheriff's improper classification and assignment of jail prisoners, particularly pretrial detainees.[1]

This issue requires a consideration of *Parker v. Williams*, 862 F.2d 1471 (11th Cir. 1989), wherein the court stated as follows:

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[1] *See* tape of phone conference (Jan. 12, 1996) (on file with court).

The specific event which could give rise to county liability in this case is Amerson's hiring of Williams. The county may be liable under section 1983 in one of two ways. Sheriff Amerson may have been acting directly pursuant to an official county policy or custom in hiring Williams without an adequate background check. *Monell,* 436 U.S. at 694, 98 S. Ct. at 2037. Alternatively, Amerson may have been acting independently but as the ultimate repository of county authority in making personnel decisions. *Id.* (county policy may be made by "those whose edicts or acts may fairly be said to represent official policy"); *see generally Familias Unidas v. Briscoe,* 619 F.2d 391 (5th Cir. 1980). As such, Amerson himself could have established the county policy or custom.

. . .

In this case, the county itself did not have any kind of official policy or well-established custom regarding personnel decisions. The county may be liable, however, for personnel policies or customs established by Sheriff Amerson if Amerson had *ultimate county authority* over such matters. The identification of officials having the authority to exercise final *county authority* over a particular area *is a matter of state law. City of St. Louis v. Praprotnik,* ___ U.S. ___, 108 S. Ct. 915, 924, 99 L. Ed. 2d 107 (1988). Such officials may have that authority from one of two sources: county authority may be granted directly, or the authority may be delegated by an official having the power to do so. *Id.* (citing *Pembaur v. City of Cincinnati,* 475 U.S. 469, 483, 106 S. Ct. 1292, 1300, 89 L. Ed. 2d 452 (1986)).

. . .

In practice, Alabama counties and their sheriffs maintain their county jails in partnership.

> *The county in essence provides the facility and the money for upkeep, and the sheriff in essence manages the institution.*
>
> . . .
>
> Macon County, not the state, has the responsibility for running the county jail under Alabama law.[2] As a general principle, the county cannot be insulated from liability for constitutional violations occurring in the performance of its obligations by assigning the authority to perform those obligations to another party.
>
> . . .
>
> Regardless of the sheriff's duties otherwise, we are looking narrowly at Sheriff Amerson's hiring decisions for the Macon County jail. . . . One official may exercise county authority over some matters and state authority over other matters.

Parker, 862 F.2d at 1477-79 (emphasis added).

In deciding that Macon County could be held responsible for the hiring decisions of the subject sheriff, *Parker* relied upon the following referenced statutes:

> Every county in Alabama must maintain a county jail. Ala. Code § 11-14-10. More precisely, every county must obtain a site and erect a "suitable" jail. *Id.* at section 11-16-28. Once in place, the county must appropriate funds for the jail. *Id.* at section 11-14-20. The county's financial support of the jail includes compensating the sheriff, *Id.* at section 11-12-15(a)(2), and paying the reasonable business expenses incurred by the sheriff. *Id.* at sections 11-12-14, 11-12-15(a)(1), (2). The Alabama Board of Correc-

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[2]Note the inconsistency with the sentence immediately above. (Footnote not in original).

> tions reports to the county commission as the "body having control over the jail." *Id.* at section 14-6-81. Alabama relegates legal custody and charge of the county jail to the county sheriff. *Id.* at section 14-6-1. The sheriff is the caretaker with regard to prison living conditions. *Id.* at section 11-14-21. Any prisoners in the county jail are in the sheriff's custody. *Id.* at sections 11-16-29, 14-6-4. Pursuant to his responsibility of running the County jail, the sheriff has authority to hire jailers and other necessary personnel. *Id.* at section 14-6-1.

Parker, 862 F.2d at 1479.

Although the cited state statutes separately and specifically address the respective responsibilities of counties and sheriffs, *Parker* somehow held that Macon County, and not the State, had delegated responsibilities to the sheriff. Section 14-16-1 of the Alabama Code states the following:

> The sheriff has the legal custody and charge of the jail in his county and all prisoners committed thereto, except in cases otherwise provided by law, and may appoint a jailer for whose acts he is civilly responsible.

Parker held, notwithstanding this statutory provision, that Macon County had delegated *its* authority to appoint a jailer. This holding was in the face of clear Alabama law, acknowledged in *Parker*, that Alabama sheriffs are, under the Constitution of Alabama, state officials and not county officials and that "[t]he identification of officials having authority to exercise final county authority over a particular area is a matter of state law. *See Parker*, 862 F.2d at 1475, 1478.

Parker relies, at least in part, on *Familias Unidas v. Briscoe*, 619 F.2d 392 (5th Cir. 1980), which related to the State of Texas. This court has not studied Texas law to

determine if Texas sheriffs are state constitutional officials as they are in Alabama. *Familias Unidas* refers to sheriffs as being among elected *county* officials. *Familias Unidas*, 619 F.2d at 404. Even *Familias Unidas*, however, states, in discussing the duties of a county judge, "Instead, his duty in implementing section 4-28, much *like that of a county sheriff in enforcing state law*, may more fairly be characterized as the effectuation of the policy of the State of Texas embodied in that statute, for which the citizens of a particular county should not bear singular responsibility." *Familias Unidas*, 619 F.2d at 404 (emphasis added).

Parker, without stating the source of Macon County's power, simply decided that Macon County had the authority to hire a jailer, even though § 14-16-1 of the Alabama Code states that Alabama sheriffs have the authority to appoint jailers. Did Macon County, notwithstanding this statute, have the authority to appoint a jailer or to otherwise interfere with the sheriff's statutory authority to do so? From whence came its authority? *Parker*, in an *ipse dixit* fashion, simply states that Alabama sheriffs and counties are partners in *the operation of jails*. No authority other than purported Alabama statutory authority is cited for this statement.

No statute cited in *Parker* assigns to counties any duty relating to the hiring of jailers or any other jail *operations*, unless the duty to "maintain a jail" includes such obligations. *See Ala. Code* § 11-14-10 (1975). The Supreme Court of Alabama has held that the duty to "maintain a jail" under § 11-14-10 includes only the duty to keep the jail in good repair. *See, Keeton v. Fayette County*, 558 So.2d 884 (Ala. 1989). Likewise, § 11-16-28 only requires a county to provide physical facilities. Section 11-14-20 simply provides for the payment of claims relating to utilities and upkeep of jails. While § 11-12-15(a)(2) provides for counties to pay sheriffs and deputies, it does not give counties

authority to make hiring decisions. Sections 11-12-14 and 11-12-15(a)(1) provide for the payment of operating expenses.

Section 14-6-81 is cited in *Parker* for the proposition that "the Alabama board of corrections reports to the county commission as the 'body having control over the jail.'" Actually, the statute provides that the report is to be made to the Governor, with a copy to the county commission "or other board or body having control over the *jail*," together with "recommendations for the betterment of the conditions thereof." *Ala. Code* § 14-6-81 (1975) (emphasis added). The statute is consistent with the physical facilities responsibilities of counties and says nothing of jail operations or employees. Living condition duties are assigned to sheriffs. *Ala. Code* § 11-14-21. Likewise, prisoners are kept in the custody of the sheriff. *Ala. Code* § 11-16-29. Sheriffs are also required to keep federal prisoners. Would a county be responsible for harm to a federal prisoner unrelated to the maintenance of physical facilities when a sheriff is required to receive such prisoners if the "jail of the county is sufficient?" *See Ala. Code* § 14-6-4 (1975).

While holding Macon County responsible for the hiring decisions of the sheriff, *Parker* itself recognized, citing § 14-6-1, that "*Alabama* relegates legal custody and charge of the county jail to the county sheriff." (emphasis added) *Parker*, 862 F.2d at 1479. In effect, *Parker* held that an Alabama county can be held liable for failure to perform duties delegated to a sheriff, not by the county, but by the State. The office of a sheriff in Alabama is a state constitutional office. The duties of the sheriff are prescribed by state statute. What authority does a county have to circumvent the state law or to interpose its own authority, which it can then delegate to the sheriff, when that authority has already been delegated to the sheriff by the State?

The fact that an Alabama sheriff has Eleventh Amendment immunity for his official acts provides no basis for a court's *ipse dixit* placement of authority with counties when they have none under the State law. A county cannot delegate authority it never has. In effect, *Parker* held that federal law gives the county the authority and imposes on it a duty, and simultaneously determines that it has delegated that authority and duty to the sheriff. *Parker* says, "Although the county's *authority* to provide a service may be vested in . . . a state official, the county cannot be insulated from liability based on its *responsibilities* with regard to that service by the simple expedience of vesting power in a state official." *Parker,* 862 F.2d at 1479 (emphasis added). From whence comes the authority? From whence come the responsibilities? Who caused the vesting of responsibilities? Whose expedience?

Parker holds that various statutorily mandated duties of sheriffs have somehow been delegated to the sheriffs by the counties. This court can draw no plausible distinction between *Parker's* holding that Macon County had "[assigned] the authority to perform [its] obligations" to hire the jailer and the plaintiff's argument here that the county has "assigned" "its obligations" with reference to being a "caretaker with regard to prison living conditions" (section 11-14-21) or "its obligations" with reference to "prisoners in the county jail [being] in the sheriff's custody" (sections 11-16-29 and 14-6-4). If *Parker* was wrongfully decided, that is an issue for appellate courts.Jefferson County acknowledges that no subsequent controlling authority has overruled Parker.[3] *Swint*

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[3]*Tittle v. Jefferson County,* 10 F.2d 1535 (1994), relied upon by Jefferson County, simply held that the plaintiff had not offered substantial evidence of a constitutional violation by *any* entity. *Dean v. Barber,* 951 F.2d 1210 (11th Cir. 1992), simply held that the trial court did not err in not allowing Jefferson County to be joined based

v. City of Wadley, 5 F.3d 1435 (11th Cir. 1993), has been belatedly cited by Jefferson County. While it is distinguishable from *Parker* on its facts, the following language casts doubt on the *Parker* holding:

> Because Alabama counties are "authorized to do only those things permitted or directed by the legislature of Alabama," *Lockridge v. Etowah County Comm'n*, 460 So.2d 1361, 1363 (Ala. Civ. App. 1984), and because the State has not assigned the counties any law enforcement authority, the sheriff is not exercising county power when he authorizes a raid on suspected criminal activity within his county.

Swint, 5 F.3d at 1450-51. *Swint*, however, does not specifically overrule *Parker* and it relates to a law enforcement raid by a sheriff, not jail activity.[4] *Lucas v. O'Loughlin*, 831 F.2d 232 (11th Cir. 1987), suggests, rightly or wrongfully, that the mere fact that a county is required to fund functions of a sheriff gives it the authority to control the sheriff's statutorily mandated duties. In *Lucas*, the court stated,

> Although elected by virtue of state law, he was elected to serve the county as sheriff. In that capacity, he had absolute authority over the appointment and control of his deputies. His and

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on a pure *respondeat superior* allegation with no *Monell* allegations. *Moore v. Jefferson County*, 44 F.3d 1008 (11th Cir. 1994), is an affirmance without opinion. Nevertheless, Jefferson County has argued that these three cases are "dispositive of the instant case." Ironically, in view of Jefferson County's reliance on it, *Tittle* involved allegations relating to the jail *facility* which would more logically subject a county to § 1983 liability than a claim based on operations.

[4] *Swint's* holding is based on the fact that "[t]he State has not assigned the counties any law enforcement authority . . ." *Id.*, at 1451. Where has the State assigned the counties authority to hire jailers or to classify and assign prisoners?

> their salaries were paid by local taxation and according to a budget approved by the county commissioners. We conclude, therefore, that his act was of St. John's County.

Lucas, 831 F.2d at 235. *Swint* did not attempt to distinguish *Lucas*. *Swint's* holding would appear to be inconsistent with that of *Lucas* in that, presumably, the salaries paid also covered law enforcement activities.

If this court were writing on a clean slate, it would grant Jefferson County's motion. The court is bound, however, by the holding in *Parker*. Jefferson County's motion will be denied without prejudice to subsequent motions addressing the merits or *Monell* issues or both. Because this issue is not only critical to this case, but is also involved in many other cases causing substantial defense expense, the court will certify the decision pursuant to 28 U.S.C. § 1292(b).

This 19th day of January, 1996.

/s/ Robert B. Propst

ROBERT B. PROPST
UNITED STATES DISTRICT JUDGE

Appeal from the United States District Court
for the Northern District of Alabama

(March 25, 1998)

Before HATCHETT, Chief Judge, TJOFLAT, ANDERSON, EDMONDSON, COX, BIRCH, DUBINA, BLACK, CARNES, BARKETT and HULL, Circuit Judges.*

DUBINA, Circuit Judge:

We took this case on an interlocutory appeal to decide whether an Alabama county can be held liable under 42 U.S.C. § 1983 for injuries befalling a county jail inmate arising from the sheriff's management of the jail. For the reasons outlined below, we hold that it cannot.

I. BACKGROUND

On July 29,1995, while he was a pre-trial detainee in the county jail of Jefferson County, Alabama, Philip Turquitt ("Turquitt") was fatally injured in a fight with another inmate, who was a convicted felon, in the dayroom of the jail. The administratrix of Turquitt's estate ("Plaintiff") filed an action pursuant to 42 U.S.C. § 1983 for alleged violations of Turquitt's rights under the federal constitution. Named as defendants in the suit were the Jefferson County sheriff in his official and individual capacities, several deputy sheriffs in their individual and official capacities, and Jefferson County ("the County"). The amended complaint alleges that the jail

*Judge Stanley Marcus was appointed after this case was orally argued, but was an active member of the court at the time the case was decided. He has elected not to participate in the decisional process.

was severely over-crowded and that because the jail lacked a classification system, inmates were housed together without regard to their relative dangerousness or conviction status. The complaint further alleges that the defendants knew of the dangerous propensities of the man who killed Turquitt but took no action to control him, and that they generally did not exercise adequate supervision over the inmates in the jail. Finally, the complaint asserts that the defendants failed to properly train and supervise staff members who worked in the jail.

The County filed a motion to dismiss, or alternatively for summary judgment, on the ground that the sheriff, who is the official policymaker for the jail, acts for the state rather than the county in administering the jail. The district court denied the motion on the authority of *Parker v. Williams*, 862 F.2d 1471 (11th Cir. 1989), which held that in Alabama a sheriff is the county policymaker with respect to the operation of the county jail. *Turquitt v. Jefferson County*, 929 F. Supp. 1451, 1455 (N. D. Ala. 1996). The district court was bound by Eleventh Circuit precedent to deny the County's motion to dismiss, but the court stated that it would have granted Jefferson County's motion if it were "writing on a clean slate." *Id.* Because of the importance of the issue to the parties in the instant suit, as well as to others similarly situated, the district court certified the decision for interlocutory appeal pursuant to 28 U.S.C. § 1292(b).

Jefferson County filed a "Suggestion of Hearing En Banc" asserting that *Parker* was in conflict with decisions of the Supreme Court and precedents of this court, and that the County's appeal involved a question of exceptional importance. *See* 11th Cir. R. 35-3. Recognizing the importance of the issues involved and the fact that a panel of this court would be bound by *Parker* to affirm the district court's order, a majority of the circuit judges in regular active service voted to hear this appeal en

banc. Fed. R. App. P. 35(a). We ordered the parties to brief two issues:

1. Whether an Alabama sheriff is a county policymaker for purposes of § 1983 liability when operating a jail.
2. Whether *Parker* was wrongly decided and should be overruled.

II. THE COUNTY'S LIABILITY

A local government may be held liable under § 1983 only for acts for which it is actually responsible, "acts which the [local government] has officially sanctioned or ordered." *Pembaur v. City of Cincinnati*, 475 U.S. 469, 479-80 (1986) (citing *Monell v. New York City Dept. of Soc. Serv.*, 436 U.S. 658 (1978)). In determining whether Jefferson County is a proper defendant in this suit, we first look to the analysis of the Supreme Court in *McMillian v. Monroe County*, ___ U.S. ___, 117 S.Ct. 1734 (1997), in which the Court considered whether an Alabama sheriff was a state or a county policymaker for § 1983 purposes when engaged in law enforcement activities. To evaluate whether a local government is liable under § 1983, a court must "'identify those officials or governmental bodies who speak with final policymaking authority for the local government actor concerning the action alleged to have caused the particular constitutional or statutory violation at issue.'" *McMillian*, 117 S.Ct. at 1736 (quoting *Jett v. Dallas Indep. Sch. Dist.*, 491 U.S. 701, 737 (1989)).

Two principles guide our analysis of which governmental actors speak with final authority. *McMillian*, 117 S.Ct. at 1737. First, we must focus our attention on the particular area or issue for which the government official is alleged to be the final policymaker. *Id.* (citing *Jett*, 491 U.S. at 737, 738; *City of St. Louis v. Praprotnik*, 485 U.S. 112, 123 (1988) (plurality opinion)). Second, our inquiry de-

pends upon an analysis of Alabama law. *McMillian,* 117 S.Ct. at 1737 (citing *Jett,* 491 U.S. at 737; *Pembaur,* 475 U.S. at 483 (plurality opinion)). We must determine the "actual function" of an official in a particular area by reference to "the definition of the official's functions under relevant state law." *Id.*

Initially, we determine who the policymaker is and in which particular area that policymaker acted. *Praprotnik,* 485 U.S. at 123 ("[T]he challenged action must have been taken pursuant to a policy adopted by the official . . . responsible under state law for making policy in that area of the [local government's] business."). The Plaintiff explains that her theories of recovery against the County are based on three alleged acts or omissions:

> (1) deliberate indifference to the substantial risk of serious harm to the inmates of the jail;
>
> (2) lack of an adequate policy to control inmate violence in the jail, as well as a failure to enforce a policy of classifying and segregating inmates based upon status, propensity for violence, medical needs, etc.; and
>
> (3) failure to adequately staff, train, and supervise its employees, officers and agents, and a failure of such employees, officers and agents to supervise and control the inmate population.

En Banc Brief of Appellee at 2. Alabama law provides that it is the sheriff who has the duty to ensure that inmates do not come to harm, to develop a policy of controlling inmate violence, and to staff the jail with appropriately trained jailors. Ala. Code §§ 14-6-1, 14-6-105 (1995). Because the parties agree that the sheriff possesses the authority to make final policy with respect to these actions, the contested issue is whether the sheriff

functions as the County's policymaker when he takes those actions.

Our answer to this question turns on state law, including state and local positive law, as well as custom and usage having the force of law. *McMillian v. Johnson,* 88 F.3d 1573, 1577 (11th Cir. 1996) (citing *Praprotnik,* 485 U.S. at 124 n. 1 (plurality opinion, adopted by the Court in *Jett,* 491 U.S. at 737)), *aff'd* ___ U.S. ___, 117 S.Ct. 1734 (1997).[1] Furthermore, the federal judiciary must "respect state and local law's allocation of policymaking authority," and not "assume that final policymaking authority lies in some entity other than that in which state law places it." *McMillian,* 88 F.3d at 1577 (citing *Praprotnik,* 485 U.S. at 126, 131). Our review of Alabama law persuades us that an Alabama sheriff acts exclusively for the state rather than for the county in operating a county jail.

We begin, as did the Supreme Court in *McMillian,* with the supreme law of the state, the Alabama Constitution. *McMillian,* 117 S.Ct. at 1737 (citing *Alexander v. State ex rel. Carver,* 150 So.2d 204, 208 (Ala. 1963)). Alabama's Constitution clearly denominates the sheriff as a member of the state's executive department. Ala. Const. of 1901, Art. V § 112. The Alabama Supreme Court, construing Art. V, § 112, as well as its legislative history, concluded that a sheriff is an executive officer of the state. *Parker v. Amerson,* 519 So.2d 442, 443 (Ala. 1987). The court further held that because a sheriff is an executive officer, "a sheriff is not an employee of a county for the purposes of imposing liability on the county." *Id.* at 442; *see also Hereford v. Jefferson County,* 586 So.2d 209, 209 (Ala. 1991).

The legislative history of the Alabama Constitution reflects an intent to bring sheriffs under the control of

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[1]Because the analysis of this issue turns on Alabama state law, the holdings of courts in other jurisdictions are of little use.

superior state officials. Sheriffs were first named executive department officials when the state constitution was amended in 1875. Ala. Const. of 1875, Art. V § 1 . At that time, authority to impeach a sheriff resided in the court of the county in which the sheriff held office. Ala. Const. of 1875, Art. VII § 3. In 1901, the framers of the Alabama Constitution decided that the Governor, as chief executive officer of the state, needed more control over the sheriffs. *See Parker v. Amerson,* 519 So.2d at 443-44. Accordingly, the Constitution was amended to enable the Governor to order the impeachment of sheriffs before the Alabama Supreme Court, thereby solidifying the chief executive officer's control over inferior executive officers. *Id.*

Significantly, this amendment was specifically designed to "guarantee the political rights of prisoners." *Id.* at 443-44 (citing *Official Proceedings of the Constitutional Convention of 1901* (Vol. 1) at 887-90). The amendment reflected the legislature's concern that county courts were failing to punish sheriffs who, by reason of malice or cowardice, had allowed lynch mobs to remove prisoners from the jails and murder them. *Id.* (citing *Official Proceedings of the Constitutional Convention of 1901* (Vol. 1) at 887-90). The Alabama Supreme Court has discerned in the constitutional amendment an intention on the part of the drafters to ensure that "a prisoner when he comes into the hands of the officers of the state shall be panoplied about with all the powers of the state . . . ." *State ex rel. Garber v. Cazalas,* 50 So. 296, 296 (Ala. 1909). In short, Alabama's Constitution sends a clear message that a sheriff is a state officer, whose actions with respect to the well-being of jail inmates are most appropriately controlled by state officials.

The Alabama Code also supports our conclusion that Alabama sheriffs act as state officers when supervising inmates and otherwise operating the county jails. In Ala-

bama, counties have only the powers explicitly granted them by the legislature. *Tuscaloosa County v. Alabama Great S. R.R. Co.*, 150 So. 328, 331 (1933). Because Alabama counties possess no inherent authority (policy-making or otherwise), absent an express delegation from the legislature, we must look to the Alabama Code to determine their role in operating the jails.[2] A thorough analysis of the Code reveals that no statute authorizes counties to supervise inmates in the county jails; instead, authority over inmates is expressly delegated to Alabama sheriffs. Moreover, in operating the jails, sheriffs are subject to control by state executive agencies, not by counties.

Under the Alabama Code, the sheriff has control over the inmates of the jail, the employees of the jail, and the jail itself. The Code bestows upon the sheriff "the legal custody and charge of the jail in his county and all prisoners committed thereto." Ala. Code § 14-6-1 (1995). The Alabama Supreme Court has held that § 14-6-1 demonstrates that "the sheriff's authority over the jail is totally independent of the [county commission]." *King v. Colbert County*, 620 So.2d 623, 625 (Ala. 1993). The sheriff appoints, directs, and controls the deputies and jailers who work at the jail. Ala. Code § 14-6-105. The County has no authority to manage the sheriff's employees. *See Lockridge v. Etowah County Comm'n*, 460 So.2d 1361, 1363 (Ala. Civ. App. 1984); *see also Terry v. Cook*, 866 F.2d 373, 379 (11th Cir. 1989) (finding that Alabama county commissioners have no authority to hire or fire deputies or jailers). In both the *King* and *Lockridge* decisions, the Alabama courts assumed as a matter of statutory construc-

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[2]We confine our analysis to positive sources of law, because we are unaware of any evidence that counties are in fact operating jails on the authority of "custom or usage having the force of law." *Praprotnik*, 485 U.S. at 124 n. 1 (plurality opinion).

tion that an express legislative delegation of authority to one official, the sheriff, necessarily meant that another entity, the county, possessed no authority in that area.

A state agency, the Alabama Department of Corrections, oversees the county jails and has the authority to regulate them.[3] The Department of Corrections must inspect the county jails periodically, to "aid in securing the just, humane, and economic management" of them. Ala. Code §§ 14-1-8(a)(3), 14-6-81. After inspecting a jail, the Department of Corrections must make a detailed report to the Governor. Ala. Code § 14-6-81. The Department of Corrections has the authority to promulgate rules for the jail pertaining to "management and security." Ala. Code §§ 14-1-8(a)(6), 14-6-86.

We recognize that Alabama counties possess some duties with respect to county jails. However, none of these duties relates to the daily operation of the jails or to the supervision of inmates. The duties of the counties with respect to the jails "are limited to funding the operation of the jail and to providing facilities to house the jail." *Stark v. Madison County*, 678 So.2d 787, 787 (Ala. Civ. App. 1996). The county commission is charged with erecting and maintaining jails, and each county is required to maintain a jail of sufficient size and strength to secure the prisoners. Ala. Code §§ 11-14-10, 11-14-13 (1989). In construing these provisions, the Alabama courts have made it clear that the duty of the county to erect and maintain a county jail pertains exclusively to the physical plant of the jail. The duty to "maintain a jail" under § 11-14-10 is merely the duty to keep the "jail and all equipment therein in a state of repair and to preserve it from failure or decline." *Keeton v. Fayette County*, 558 So.2d 884, 886 (Ala. 1989).

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[3] The Alabama Department of Corrections is the successor to the Alabama Board of Corrections. Ala. Code § 14-1-1.1.

The Alabama Code provides for the counties to remain informed about conditions within the jails. We conclude that these statutes are entirely consistent with the counties' limited role in building and funding the jails and do not imply or impart any control over the jails' operation. The county commission has the authority to inspect the jail without notice to the sheriff. Ala. Code § 11-14-22 (1989). This is a reasonable way for the county to learn what its appropriations buy and whether future funding should be increased or redirected. A copy of the Department of Corrections' inspection report to the Governor is also given to "the county commission, city council, or other board or body having control over the jail, prison or almshouse dealt with in such report." Ala. Code § 14-6-81. In the absence of any positive delegation of control over the jails from the legislature to the counties, we do not place any significance in the fact that this language could be construed to name the county commission as the body having control over the jail.

The county commission must appropriate funds for the jail to cover the expense of necessities such as bedding, clothing, electricity, and sanitation. Ala. Code §§ 11-12-15(a)(1), 11-14-20. Under emergency circumstances, the county commission has a duty to hold a special meeting and appropriate funds to meet necessities. Ala. Code §§ 11-14-19, 11-14-20. However, the Plaintiff's complaint does not relate to the provision of such necessities, nor does it allude to any failure on the County's part to appropriate adequate funds.

The County also pays the salaries of the sheriff and jail personnel. Ala. Code §§ 11-12-15(a)(2), 36-22-16. The Supreme Court held that an Alabama county's duty to pay the sheriff's salary "does not translate into control over him, since the county neither has the authority to change his salary nor the discretion to refuse payment completely." *McMillian,* 117 S.Ct. at 1740. The Court fur-

ther held that the county's ability to limit the sheriff's operating budget to that which is reasonably necessary gives the county "at most" an influence over the sheriff that is "attenuated and indirect." *Id.*

The sheriff is under a duty, placed upon him by the state legislature, to provide necessities such as sanitary facilities, clothing, bedding, and drinking water as far as the County's appropriation of funds allows. Ala. Code § 11-14-21. Plaintiff argues that this provision demonstrates that Alabama counties are partners with Alabama sheriffs in their operation of the county jails. On the contrary, we conclude that the governing statutes impose complementary but distinct duties upon counties and sheriffs with respect to the county jails. Section § 11-14-20 places upon the County the duty to make available adequate funds, while § 11-14-21 passes the mantle of responsibility to the sheriff who must spend those funds. Far from joining the sheriff in a partnership with the County, the "as far as the appropriation allows" language excuses the sheriff from performance of this duty if the County has not first performed its coordinate duty. Moreover, even if the sheriff and the County might be said to be in a partnership with respect to providing bedding, electricity, and clean water, the present lawsuit does not charge the lack of any such commodity.

The Alabama Supreme Court has dispelled the partnership theory by holding that the authority of the sheriff over operation of the jail is "totally independent" of the county commission. *King,* 620 So.2d at 625. Where a duty is specifically placed upon the sheriff, that duty is "statutorily reserved" for the sheriff, and the county has no liability for the sheriff's failure to perform it. *Stark,* 678 So.2d at 788 (sheriff is directed to operate jail and to keep it clean and therefore county has no liability for inmate's slip and fall accident caused by puddle of water on floor).

Finally, we observe that there is no evidence that Alabama has engineered the structure of its government so as to allow the counties to evade § 1983 liability for constitutional deprivations suffered by jail inmates. Alabama's system was established before the Supreme Court's decision in *Monell* established the parameters of local government liability under § 1983, see *McMillian*, 117 S.Ct. at 1742, and it was established for the express purpose of providing greater protection to the inmates of the county jails. *See e.g., Cazalas*, 50 So. at 296.

III. PARKER V. WILLIAMS

As the discussion in Part II indicates, Alabama counties have no duties with respect to the daily operation of the county jails and no authority to dictate how the jails are run. *Monell*, which firmly established that local governments could be sued under § 1983, is "a case about responsibility." *Pembaur*, 475 U.S. at 478 (discussing *Monell v. New York City Dept. of Soc. Serv.*, 436 U.S. 658 (1978)). The County cannot be liable for the harms that befall jail inmates due to improper operation of the jail or negligent supervision of its inmates because the County has no responsibility in that area. As we observed in *McMillian*, where we held that an Alabama county is not liable for a sheriff's law enforcement activities,

> because counties have no control over sheriffs, allowing county liability for a sheriffs actions would ignore *Monell*'s conception of municipalities as corporations and substitute a conception of municipalities as mere units of geography. . . . [H]olding the county liable for a sheriff's actions would impose even broader liability than the *respondeat superior* liability rejected in *Monell*.

88 F.3d at 1577. Only our decision in *Parker* supports the Plaintiff's position that the County can be held liable for

injuries to jail inmates because it operates its jail in partnership with the county sheriff. As the foregoing analysis demonstrates, *Parker* is not in accord with controlling § 1983 jurisprudence, and we hereby overrule that decision, and any subsequent decisions following it, insofar as they held that Alabama sheriffs in their daily operation of county jails act as policymakers for the county.

The holding and rationale of *Parker* are flawed for two reasons. First and foremost, the opinion is not based on a straightforward reading of state law. The *Parker* court developed a rather elaborate theory that the sheriffs and counties operate the county jails in partnership. We do not hold that a state could never choose such an arrangement; the power of government may be distributed among officials and official bodies in a "rich variety of ways." See *Praprotnik*, 485 U.S. at 124 (plurality). However, after the *Parker* court announced the partnership theory of jail management, the Alabama courts interpreted the controlling statutes in a way that offers a simpler explanation of the governance of the Alabama county jails. Most importantly, the Alabama Supreme Court ruled that the statutory mandate that the county "maintain a jail" simply meant that the county must "maintain the jail building and its equipment." *Keeton*, 558 So.2d at 886. Alabama's highest court clarified the sheriff's role in *King v. Colbert County*, which held that a county sheriff operates a jail independently of the county commission. *King v. Colbert County*, 620 So.2d at 625. This elucidation of Alabama's law explains that while counties have certain responsibilities with respect to county jails, those responsibilities are clearly enumerated in the statute and relate only to maintaining the jail's physical plant and providing operational funding. The sheriffs, on the other hand, have full responsibility for daily management of the jails, including inmate supervision, and they are not subject to county oversight in their perfor-

mance of this responsibility. *See* Ala. Code § 14-6-1; *King v. Colbert County,* 620 So.2d at 625. We recognize our obligation to "respect state and local law's allocation of policymaking authority," *McMillian,* 88 F.2d at 1577 (citing *Praprotnik,* 485 U.S. at 131), and therefore, *Parker* cannot continue to be the law of this circuit.

Second, the *Parker* court held that a county could be liable for the actions of a sheriff over whom it had no supervisory or administrative control. *Parker,* 862 F.2d at 1480. The law is to the contrary: local governments can never be liable under § 1983 for the acts of those whom the local government has no authority to control. A local government "must have power in an area in order to be held liable for an official's acts in that area." *McMillian,* 88 F.2d at 1577. When establishing the parameters of local government liability for § 1983 violations, Congress declined to impose liability on municipalities for the actions of mobs which the municipalities had no duty under state law to control. *Pembaur,* 475 U.S. at 479 (citing *Monell,* 436 U.S. at 665-83). In *McMillian,* the Supreme Court analyzed state law to determine whose policymaker the sheriff was when engaging in law enforcement by asking which government body, under state law, had direct control over how the sheriff fulfilled his law enforcement duty. *McMillian,* 117 S.Ct. at 1739. In addition, a local government can only be liable under § 1983 for injuries which the government itself caused, *Monell,* 436 U.S. at 691, and causation necessarily implies control.

IV. CONCLUSION

Parker is overruled to the extent that it conflicts with our holding that Alabama sheriffs are not county policymakers in their daily management of county jails. Accordingly, we vacate the district court's order denying the County's motion to dismiss and remand this case for

further proceedings consistent with this opinion. We emphasize that our holding is limited to answering the questions for which we granted interlocutory appeal. We expressly do not decide any remaining issues that are pending in the district court, and we offer no opinion about any other claims that have been or may be raised against the defendants in this case.

VACATED AND REMANDED.